

09 3870

FILED

IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

\* SEP 08 2009

BROOKLYN OFFICE  
Case No. S

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

ABRAHAM COHEN,

Plaintiff,

--against--

COMPLAINT

DANIEL E. SULLY, HOME HEATING OIL CORP.,  
THRIFTY HOME HEATING OIL INC., AND  
“JOHN DOES” 1 THROUGH 10, said names being fictitious  
and intended to designate unknown persons or entities who  
unlawfully attempted to collect monies from plaintiff,

ROSS, J.

Defendants.

REYES, M.J.

**I. Preliminary Statement**

1. Plaintiff, Abraham Cohen, brings this action for illegal practices of Daniel Sully, Home Heating Oil Corporation and Thrifty Home Heating Oil Inc. (hereinafter “Defendant” or “Defendants”), who used false, deceptive, and misleading practices in conjunction with an attempt to collect an alleged debt. Plaintiff alleges that the Defendant has violated the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et. seq. (hereinafter “FDCPA”). Plaintiff seeks statutory damages, punitive damages, costs and attorneys fees.

**II Jurisdiction**

2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k and 28 U.S.C. §1331, and the pendant jurisdiction of the Court for State Law Claims. Venue in this District is appropriate because pertinent events took place here.

**III Parties**

3. Plaintiff, Abraham Cohen., is a natural person, who resides in the State of New York, County of Kings which is within the Eastern District of New York. He is a “consumer” as defined by § 1692a (3) of the FDCPA.
4. Defendant Daniel E. Sully, is, upon information and belief, an individual who maintains a place of business located at 241 86<sup>th</sup> Street, Brooklyn, New York, 11209. The Defendant is a debt collector because he regularly attempts to collect debts owed, or alleged to be owed, for personal, family or household purposes. Defendant does business in the Eastern District of New York.
5. Co-Defendants Home Heating Oil Corp., Thrifty Home Heating Oil and “John Does 1 through 10” are domestic corporations or other entities located in the Eastern District of New York, who sell fuel oil and who are alleged to have cheated plaintiff and other similarly situated individuals by falsely billing them for goods and services never delivered.

**IV. First Cause of Action**

**Fair Debt Collection Practices Act**

6. The Plaintiff is alleged to have incurred debt in the amount of up to \$4300.00 to Home Heating Oil Corp, Thrifty Home Heating Oil, and "John Does 1 through 10". Several years ago, after receiving various bills in differing amounts, plaintiff contacted one or more of the defendants to dispute these bills, as he only occasionally purchased oil from them on a cash basis, and was never extended credit at all. Plaintiff was assured that the bills would be corrected.
7. That at a time unknown to plaintiff, the alleged debt was forwarded to the defendant, Daniel E. Sully, Esq., for the purpose of commencing debt collection activity.
8. That in an attempt to collect the debt referenced in Paragraph 6 heretofore, the defendant contacted the plaintiff by letter, and after he was notified by plaintiff's counsel that no funds were due and owing, Defendant Sully commenced suit against plaintiff. Furthermore, he improperly placed a UCC-1 lien against plaintiff's residence and caused said lien to attach the proceeds of his mortgage refinancing, thereby making it impossible for plaintiff to use the funds obtained in that transaction. Defendant Sully did so with actual or constructive knowledge that plaintiff was a cash customer who never knowingly signed a credit agreement authorizing the filing of a Financing Statement or any other authorization for a lien. Defendant Sully also lied to Plaintiff's attorney by stating that he was in possession of several dishonored

checks from plaintiff, when plaintiff, at the time of the alleged purchases, did not have any bank accounts at all. In addition, Defendant Sully tried to coerce plaintiff into paying his legal fees to remove the lien which he had unlawfully placed on the property.

**V. Statement of Claim**

9. The defendant violated the FDCPA. These violations include, but are not limited to, the following:

- (a) violation of 15 U.S.C. § 1692d by engaging in conduct the natural consequences of which is to harass, oppress or abuse any person in connection with the collection of a debt.
- (b) Violation of 15 U.S.C. § 1692e by engaging in false, deceptive and misleading representations in connection with the collection of an alleged debt.

**VI. First Claim For Relief**

10. As a result of the above violations of the FDCPA, the Defendant is liable to the Plaintiff for statutory damages, actual damages and attorneys fees, all pursuant to 15 U.S.C. § 1692j,

**VII Second Claim For Relief**

11. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 10 hereinabove as if fully set forth at length herein.

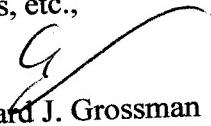
12. The acts and omissions of defendants in billing plaintiff for oil he never purchased, suing him for the purchase price of the oil and taking a security interest in his home which he had never authorized constitute common law fraud and are also deceitful, deceptive and dishonest practices unlawful under New York State General Business Law Article 22A, and other applicable statutes, invoked here under the doctrine of pendent jurisdiction. Plaintiff relied on defendants' fraudulent representations and was harmed as a result.

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in his favor and against the defendants, and each of them, for:

- A. Statutory damages in the amount of \$1,000.00 (One Thousand Dollars) pursuant to 15 U.S.C. § 1692k; and statutory damages in the amount of \$1,000.00 (One Thousand Dollars) for each specific violation pursuant to GBL Section 349f;
- B. Actual damages;
- C. Attorney's fees, litigation expenses and costs pursuant to 15 U.S.C. §1692jl;
- D. Such other and further relief as may be just and proper.

DATED: Smithtown, New York  
June 24, 2009

Yours, etc.,

  
Edward J. Grossman  
Attorney for Plaintiff  
135 W. Main Street  
Smithtown, NY 11787  
(631) 265-5864